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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,274	03/10/2004	David Kirchhoff	03968-P0001E	2954
24126 7590 09/03/2009 ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619				
EXAMINER BROOKS, MATTHEW L.				
ART UNIT		PAPER NUMBER		
3629				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/797,274

**Applicant(s)**

KIRCHHOFF ET AL.

**Examiner**

MATTHEW L. BROOKS

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. This communication is in response to the RCE and Amendments to the claims filing on 17 August 2009.

### *Status of Claims*

2. Original claims 10 and 13-16 are currently pending.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. First note for interpretation purposes the term "recipe" will be given its dictionary definition as defined by [www.merriam-webster.com](http://www.merriam-webster.com) as 2 : a set of instructions for making something from various ingredients OR 3 : a formula or procedure for doing or attaining something.
5. Claims **10 and 13-16** are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,673,691 (Abrams).
6. With respect to **claim 10** : Abrams teaches a system for generating and displaying a single, composite nutritional indicator for a serving of a multiple

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ingredient recipe, the recipe being supplied by the user of the system, said system comprising:

a user interface for receiving from the user the identity and amount of the ingredients of the recipe and serving size information (Fig 4, 1700 and Fig. 20, User interface allows user to choose breakfast, recipe for breakfast is Cinnamon Oatmeal & Banana, Fig 21, shows serving size information);

a database containing nutritional data for common recipe ingredients including the recipe ingredients identified by the user (Fig 21, shows recipe ingredients, 1 ¼ cup hot oatmeal, and med banana, 8 oz skim milk), the nutritional data comprising plural nutritional parameters for each ingredient (Fig 22 - first nutritional parameter is serving size; second is calories, third is fat);

a processor for calculating the single, composite nutritional indicator for a serving of the recipe from the user information and the database data (single composite indicator Fig 22, in rectangle; the recipe being cinnamon oatmeal and banana, the single composite nutritional indicator is 373 – total calories), the single, composite nutritional indicator being a single numerical value calculated based on the plural nutritional parameters for each ingredient (Fig 22, utilizes serving size and food type to determine composite indicator = total calories; 363 calories is the single numerical value calculated) ; and

a display field for displaying the calculated composite nutritional indicator for a serving of the recipe (Fig 22, indicator displayed with in rectangle).

7. With respect to **claim 13** : Abrams teaches wherein the user interface further includes individual nutritional indicator display fields operable to display

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the plural nutritional parameters nutritional indicators associated with each ingredient of the recipe (Fig 26, wedge replace banana indicator change and serving size listed).

8. With respect to **claim 14** : Abrams teaches wherein the user interface further includes selectable indicia operable to be selected to include or remove the ingredients of the recipe (Fig 23 – substitute food).

9. With respect to **claim 15** : Abrams teaches a user interface includes a selectable list of the ingredients associated with at least one of a food manufacturer and a restaurant (Fig 25, inherently the ingredients are associated with a food manufacturer).

10. With respect to **claim 16** : Abrams teaches further comprising a second database operable to maintain a history of consumption of the multiple ingredient recipes and associated single, composite nutritional indicators (Fig 47, total calories target, and total calories *actual*).

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 10 and 13-16 have been considered but are moot in view of the new ground(s) of rejection.

12. In order to facilitate compact prosecution, Examiner does take the time to address some matters herein this section.

Arguments all of page 5 bridging pg 6, argues on the whole page and next a concept of "points"® further describing the true nature and possible novelty of the nutritional indicator. Examiner does not address these arguments because

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Applicant has failed to claim any of it, but rather is trying to place it in the arguments.

### ***Conclusion***

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MATTHEW L. BROOKS** whose telephone number is (571)272-8112. The examiner can normally be reached on Monday - Friday; 8 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew L. Brooks/  
Patent Examiner, GAU 3629  
8/31/2009